IN THE HIGH COURT OF JUDICATURE AT BOMBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2390 OF 2006

Shri Dr. Anil Moreshwar Ravetkar)
Age 60 yrs., Occupation, Retired,)
Residing at: Shree Dwarka Apartments,)
Model Colony, Harekrishna Mandir Path)
Pune - 16.) .....Petitioner.

V/s

1. State of Maharashtra)
)
2. Pune Municipal Corporation)
Shivaji Nagar, Pune - 411 005.)
)
3. Mr. Nitin Karir)
Commissioner, Pune Municipal)
Corporation, Shivajinagar, Pune -5).....Respondents.

Mr. A.M. Joshi for Petitioner.

Mr. P.M. Patil, Assistant Government Pleader for Respondent No.1.

Mr. R.G. Ketkar for Respondent Nos. 2 and 3.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **OCTOBER 4, 2006**

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Heard.

2. Rule. By consent rule is made returnable forthwith. Respondents waive service.

3. By this Petition, the petitioner is challenging the order passed by the Government dated 4th February, 2005 whereby the Government was pleased to set aside the Resolution passed by the Standing Committee, Pune Municipal Corporation dated 29th July, 2003 by exercising the power vested in it under section 451 of the Bombay Provincial Municipal Corporation Act, 1949 (For short "B.P.M.C. Act") and the petitioner is also challenging the order passed by the Municipal Commissioner, Pune Municipal Corporation dated 28th September, 2005 which was passed by him as a consequence of the impugned decision of the Government dated 4th February, 2005 whereby the Municipal Commissioner directed that the petitioner should be

removed from service and that he should not be given pension and other retirement benefits.

4. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under :-

5. The petitioner was appointed as Assistant Medical Officer of Health in Pune Municipal Corporation in August, 1976. He was promoted to the post of Medical Officer in the year 1978. An inquiry was initiated against the petitioner and a charge-sheet was served upon the petitioner on 30th October, 2001. The Inquiry Officer gave a report, holding the petitioner guilty for having caused loss to the Corporation. The inquiry report and the explanation given by the petitioner was placed before the Standing Committee. The Standing Committee, however, held that the petitioner was not guilty. On 29th July, 2003, the General Body of the Corporation also held that the petitioner was not guilty. In the meantime, on 30th April, 2003, the petitioner retired on superannuation and he was informed by the Commissioner that the inquiry against him was continued and a reference

had been made under section 451 of the B.P.M.C. Act to the State Government. A letter was sent by the Municipal Commissioner on 28th September, 2005 which was received by his daughter as the petitioner had gone to U.S.A to stay alongwith his son. The said letter was opened by the petitioner on 30th January, 2006 and in the said letter it was stated that the petitioner was removed from his service.

6. Shri Joshi, the learned Counsel appearing on behalf of the petitioner submitted that the provisions of section 451 cannot be invoked by the Government in service matters. His next submission was that even if it is held that the provisions of section 451 apply in such cases, the procedure which is prescribed under section 451(2) & (3) of the B.P.M.C. Act had not been followed by the Government in the present case and no hearing was given to the Petitioner or the Municipal Corporation which had passed the Resolution and, therefore, on this ground alone, the order passed by the Government and the consequential order passed by the Municipal Commissioner was liable to be set aside. The learned Counsel for the petitioner relied upon the Division

Bench Judgment of this Court in the case of *Netaji Pratishthan Vs. Government of Maharashtra and Ors.*[1] wherein this Court has held that the order passed by the Government without giving notice to the Corporation was unsustainable.

7. The learned Counsel appearing on behalf of the respondent Nos. 2 and 3, on the other hand, vehemently opposed these submissions made by the learned Counsel for the petitioner. He submitted that Full Bench of this Court in the case of *Sanjay Govind Sapkal and others vs. Collector of Dhule and others*[2] had held that the plea of absence of opportunity raised by the employee in a similar provision which was found in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act could not be raised and the power under the said section 308(1) having been exercised by the Collector after recording reasons was not illegal. He also relied upon the judgment of the Supreme Court in the case of *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*[3] and submitted that the Supreme Court had held that the order lacking jurisdiction need not be

1 2004(4) ALL MR 567
2 2004(2) Mh.L.J. 874
3 (1999) 8 SCC 16

set aside if it would result in revival of an illegal order.

8. Before we consider rival contentions, it would be appropriate to refer to the provisions of section 451 of the Bombay Provincial Municipal Corporation Act, 1949 which reads as under:-

> "451. Power of State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority in certain cases : (1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing of any act which is about to be done or is being done by or on behalf of the Corporation or such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead

to abuse or misuse of or to cause waste of municipal funds against the interests of the public, the State Government may, by an order in writing suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or periods as it may specify therein. A copy of such order shall be sent forthwith by the State Government to the Corporation and the Commissioner or the Transport Manager.

2. On receipt of a copy of the order as aforesaid, the Corporation or Commissioner of Transport Manager may, if it or he thinks fit, make a representation to the State Government against the said order.

3. The State Government may, after considering any representation received from the Corporation or Commissioner or Transport Manager and where no such representation is received within a period of thirty days, either cancel, modify or

> confirm the order made by it under sub-section (1) or take such other action in respect of the matter as may in its opinion be just or expedient, having regard to all the circumstances of the case. Where any order made under sub-section (1) is confirmed the State Government may direct that the resolution or order of the Corporation or its authority in respect of which suspension order was made under sub-section (1) shall be deemed to be rescinded.
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> 4. Where any order is made by the State Government under sub-section (5), it shall be the duty of every Councillor and the Corporation and any other authority or officer concerned to comply with such order."

In the present case, it is an admitted position that the State Government has not considered the representation of the Corporation and no opportunity to that effect was given to the Corporation. In our view, the impugned order passed by

the Government which is annexed at Exhibit “K-1” vide Government decision No. PMC-30 2003/4201/P.K. 124/99 dated 4th February, 2005, therefore, will have to be quashed and set aside on this ground alone and subsequent order passed by the Municipal Commissioner dated 28th September, 2005 as a consequence of the aforesaid order also will have to be quashed. In our view, the State Government was not justified in passing the impugned order cancelling the Resolution passed by the Municipal Corporation without issuing notice to the Pune Municipal Corporation before passing the said order. The impugned order, therefore, cannot be sustained. A similar view has been taken by the Division Bench of this Court in the case of Netaji Pratishthan (supra).

9. The learned Counsel for the respondents has placed reliance on the judgment of the Supreme Court in the case of Maharaja Chintamani Saran Nath Shahdeo (supra). The ratio of the said judgment will not apply to the facts of the present case. There, the Apex Court had observed that the order lacking jurisdiction need not be set aside if the result of

setting aside such order was revival of an illegal order. In the present case, it cannot be said that the Resolution passed by the Municipal Corporation was illegal. At the most, it may be said that it is incorrect. Therefore, it cannot be said that if the order of the State Government is set aside, it would amount to revival of an illegal order. Similarly, reliance is also placed on the judgment of the Full Bench of this Court in the case of Sanjay Govind Sapkal (supra). The ratio of the said judgment also will not apply to the facts of the present case. In the said case, a plea was raised by the employees of the Corporation that they were not given an opportunity before the Resolution was set aside by the Collector. In the present case, the contention is that the Municipal Corporation was not given any opportunity to make a representation. Therefore, facts of the present case are different and the ratio, therefore, of the said Full Bench judgment in the case of Sanjay Govind Sapkal (supra) will not apply to the facts of the present case.

10. In the result, Writ Petition is allowed. The order passed by the State Government dated 4th February 2005 is set

aside. Consequently, order passed by the Commissioner dated 28th September, 2005 is also set aside. The matter is remanded back to the State Government to decide the case in accordance with law. All contentions of both sides are kept open. The State Government may give reasonable opportunity to the Corporation to make a representation and shall consider the said representation before passing the final order.

11. We would like to mention here that this order would not come in the way of the respondents in taking all steps which are available to them in accordance with law. No further directions are necessary in this Petition.

12. With these directions, Writ petition is disposed of. Rule is made absolute in the above terms. In the facts and circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

V.M. KANADE, J.